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7	UNITED STATES OF AMERICA		
8	BEFORE THE NATIONAL LABOR RELATIONS BOARD		
9			
10	UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION,	Nos. 31-CA-29913; 31-CA-30021 and 31-CA-30088	
11	,	358 NLRB No. 65	
12	Charging Party,	MOTION FOR RECONSIDERATION	
13	And		
14	FRESH & EASY NEIGHBORHOOD		
15	MARKET INC. ,		
16	Respondent.		
17			
18	Charging Party hereby moves the Board for	l reconsideration of its Decision and Order in	
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20	broad order without explanation. Below we address this issue in large part because there were		
21	events subsequent to the issuance of the ALJ's decision which confirm the necessity of a broad		
22	order.		
23		her 18 2011. At the time she issued her	
24			
decision, the Board had already decided 2 cases finding that this employer had violated the			
26	In Fresh & Easy Neighborhood Market, 356 NLRB No. 85 (January 31, 2011) and Fresh & Easy Neighborhood Market, Inc., 356 NLRB No. 90 (January 31, 2011), the Board found various violations of the Act. In both of these cases there was management involvement from the corporate office. For 1		
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MOTION FOR RECONSIDERATION Case Nos. 31-CA-29913; 31-CA-30021 and 31-CA-30088)

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example in case 356 NLRB No. 90 there was unrebutted evidence that the store manager had been provided the unlawful no-solicitation rule by corporate. "Hardin asked if the rule was Tillinghast's or did it come from corporate, and Tillinghast answered it was from corporate." Decision p. 3. Also: "Kalilimonku credibly testified that Tillinghast said that he had received word from corporate about the union representatives, that they would not be allowed in the store and that the employees were not allowed to talk about the union in the store or with each other." Id. Thus, the unlawful rule was the result of direction from corporate headquarters.

In the same case, the Board rejected the claim that intervention by the corporate human relations person Paula Agwu effectively repudiated the unlawful conduct. See footnote 2. Her involvement again shows that corporate offices control labor relations on the store level. Thus, in summary, in that case, there was corporate control and indeed creation of the unlawful nosolicitation rule imposed in the store.

In case 356 No. 85 the Board found that a corporate wide rule maintained by Fresh & Easy was unlawful. The ALJ also noted in the course of his decision, the extensive involvement of Nahal Yousefian, the employer's director of employee relations. Thus again, there was direct corporate involvement in that case. And furthermore the unlawful rule was imposed company wide.

At the time the ALJ decided the present case and exceptions were filed, Fresh & Easy was refusing to comply with the Board's Decision and Orders. It simply thumbed its nose at the Board.

Since then both decisions have been summarily enforced by the DC Circuit. Case 356 NLRB No. 90 was summarily enforced in case No. 11-1053 in the Court of Appeals for the District of Columbia Circuit. Judgment in that case was filed on March 13, 2012.

In case 356 NLRB No. 85, that same Court summarily enforced the Board's Order in a decision filed March 5, 2012. See case No. 11-1052.

Thus in both cases, even though the Board had issued its Decision and Orders, Fresh & Easy thumbed its nose at the Board and sought review in the D.C. Circuit. The D.C. Circuit summarily denied both petitions and enforced the Board's Decisions and Orders in full.

This refusal to comply with the Board's decision in two cases where enforcement was necessary should demonstrate that this is an intentional and recidivist violator of the Act. The enforcement of these two decisions was not before the Board when it without explanation refused to adopt the broad order.

A third case bears upon this issue. In a case entitled *2 Sisters Food Group*, 357 NLRB No. 168 (December 29, 2011), the Board found that 2 Sisters Food Group had violated the Act by among other things, discharging an employee and committing other violations of the Act. Once again, high corporate officials were involved in this decision making, including the plant manager. 2 Sisters at that time, was a captive supplier to Fresh & Easy Neighborhood Market. On June 28, 2010 Fresh & Easy purchased the business and all the assets of 2 Sisters after the violations referred to in the Board decisions had been committed. Thereafter, Region 21 issued a compliance specification notice of hearing addressing the failure of Fresh & Easy to remedy the unfair labor practices of 2 Sisters Food Group. The General Counsel takes the position that Fresh & Easy is a successor for *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973 remedial purposes). Among other things it purchased the entire operation with knowledge of the violations.

Fresh & Easy has brought this matter to this Board's attention. In fact, Fresh & Easy filed a "Motion to Dismiss Compliance Specification Notice of Hearing" on/or about May 30, 2012 detailing its position why even though it purchased the entire assets of 2 Sisters, it should not be required to remedy those violations. The Board has recently summarily denied that motion to dismiss by way of an Order on July 9, 2012. Charging Party requests that the Board take administrative Notice of its file regarding that matter.

Fresh & Easy's contempt of its obligation to remedy the Board's decision in 2 Sisters is further evidence of its recidivist activity.

There is further evidence of Fresh & Easy's recidivist conduct.

In a pending case 21-CA-39645 involving Fresh & Easy Neighborhood Market Inc., Charging Party served a subpoena on Fresh & Easy which it failed to comply with and failed to file a Motion to quash. The General Counsel was then forced to initiate proceedings in the

District Court to compel Fresh & Easy to comply with the Subpoena. That matter is entitled *National Labor Relations Board v. Fresh & Easy Neighborhood Market Inc.*, Case No.: 2:11-cv-10070-CBM in the United States District Court, Central District of California. The Court heard the matter and issued an order on April 4, 2012 a copy of which is attached as Exhibit A granting the application for enforcement of the Subpoena Duces Tecum. This matter is now scheduled for resumed hearing on July 24 and Fresh & Easy has yet to comply with the Subpoena. Fresh & Easy has filed an appeal to the 9th Circuit but Fresh & Easy does not have a stay. This litigation proves again that Fresh & Easy is a willful and contemptuous violator of the Act. Even when order to comply with the subpoena by the Administrative Law Judge, the employer refuses and forces an enforcement action. It has yet to comply with the Subpoena.

- In addition as noted above, Region 21 has issued a complaint in Case number 21-CA-39649. The complaint alleges further company wide maintenance of invalid rules. We recognize however that no decision has been issued. The request for a broad order will be before the ALJ in the latter case. The Board may in its discretion hold this Motion until the matter pending in case 21-CA-39649 comes before the Board or is otherwise resolved. Alternatively it can direct the ALJ in that case to consider a broad order.
- In summary, this motion for Reconsideration should be granted. Since the ALJ issued her decision, the D.C. Circuit has enforced 2 of the Board's orders. The employer has failed and refused to remedy the Board's decision and Order in the 2 Sisters Food Group case. Fresh & Easy has failed to comply with the Subpoena so as to force the General Counsel to seek an enforcement action and the District Court granted that petition. The employer has yet to comply with the subpoena. There is another case pending where a company wide violation is alleged to have existed and continues to exist.

In summary, Fresh & Easy is a repeat and intentional violator of the Act. It refuses to remedy any violations of t he Act without a board order and court enforcement.¹ A broad order is appropriate and necessary.

¹ There are no informal settlements of any cases by Fresh & Easy.

WEINBERG, ROGER & ROSENFELD A Professional Corporation Dated: July 17, 2012 /s/ David A. Rosenfeld DAVID A. ROSENFELD By: Attorneys for Charging Party 125796/676167

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1	<u>CERTIFICATE OF SERVICE</u>	
2	I am a citzen of the United States and an employee in the County of Alameda, State of	
3	California. I am over the age of eighteen years and not a party to the withing action; my business	
4	address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that or	
5	July 17, 2012 the was served on all parties or their counsel of record as listed below.	
6	Served Via Email Served Via E-Filing	
7	John Rubin, Esq. Chief Administrative Law Judge	
8	Counsel to the Acting General Counsel National Labor Relations Board, Region 31 11150 West Olympic Blvd., Suite 700 Los Angeles, CA 90064-1825 National Labor Relations Division of Judges www.nlrb.gov	
10	John.rubin@nlrb.gov	
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18	she winan@se yiai tii.com	
19	I certify under penaly of perjury that the above is true and correct. Executed at Alameda,	
20	California, on July 17, 2012.	
21		
22	/s/Katrina Shaw Katrina Shaw	
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25		
26		
27		
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